

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION**

FREDERICK BANKS, #05711-068

PLAINTIFF

VERSUS

CIVIL ACTION NO. 5:08-cv-281-DCB-MTP

U.S. POSTMASTER YAZOO CITY, et al.

DEFENDANTS

ORDER DENYING PLAINTIFF'S MOTION TO RECONSIDER

BEFORE THE COURT is Plaintiff's Motion for Reconsideration [4] filed September 26, 2008. Plaintiff moves the Court to reconsider the order [3] entered on September 22, 2008, which denied Plaintiff's request to proceed *in forma pauperis* based on his "three strikes" and the Plaintiff was directed to pay the filing fee within twenty days. Having considered the issues raised in the motion [4] along with the applicable case law, the Court finds that the motion is not well-taken and should be denied.

As previously explained to the Plaintiff, this Court has the power to liberally construe a *pro se* plaintiff's pleading as one brought pursuant to another statute. *See Davis v. Fechtel*, 150 F.3d 486 (5th Cir. 1998); *Dickerson v. Louisiana*, 816 F.2d 220 (5th Cir. 1987). In addition, Plaintiff has previously been advised that he can not pursue a criminal proceeding against a defendant for an alleged violation of his constitutional rights. *See United States v. Batchelder*, 442 U.S. 114 (1979); *see also United States v. Nixon*, 418 U.S. 683, 693 (1974); *Inmates of Attica Correctional Facility v. Rockefeller*, 477 F.2d 375 (2d Cir. 1973); *Williams v. Luttrell*, 99 F.App'x 705, 707 (6th Cir. 2004). Plaintiff's latest filing is nothing more than an attempt to

circumvent the PLRA's proscription against litigants who abuse the privilege of proceeding *in forma pauperis*. Plaintiff is merely on equal footing with every other federal litigant who is required to pay the filing fee. *Adepegba v. Hammons*, 103 F.3d 383, 386-87 (5th Cir. 1996).

IT IS HEREBY ORDERED that the Plaintiff's Motion to Reconsider [4] filed on September 26, 2008, is **DENIED**. The Plaintiff is ORDERED to pay the full filing fee of \$350.00 on or before October 13, 2008, or this action will be summarily dismissed, without further notice to the Plaintiff.

This the 22nd day of October, 2008.

s/ David Bramlette
UNITED STATES DISTRICT JUDGE